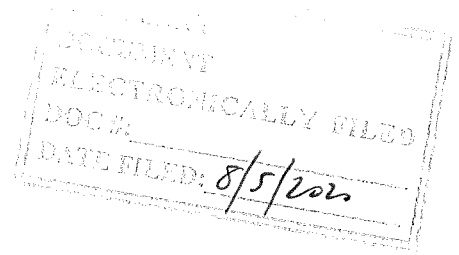


UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
LEONARD PINA-RODRIGUEZ,
Plaintiff,

v.

MULTI-DIAGNOSTIC SERVICES, INC.; and
GARY GARBUTT,
Defendants.
-----X

ORDER

18 CV 5167 (VB)

By letter to plaintiff dated August 4, 2020, a copy of which has been provided to the Court, counsel for Multi-Diagnostic Services, Inc. (“MDS”) explains that MDS did not provide or conduct the mobile MRI services which serve as the subject of plaintiff’s remaining deliberate indifference claim in this case, nor did MDS train or employ the MRI technicians that attempted to, or did, administer plaintiff’s alleged MRIs. (Doc. #60).

Annexed to defense counsel’s August 4 letter are affidavits of Thomas Herman, the Chief Executive Officer of MDS, and Jacqueline Miller, the president of U.S. Mobile Imaging, LLC (“U.S. Mobile”). According to the affidavits, a company named Correctional Diagnostic Imaging, Inc. (“CDI”) contracts with U.S. Mobile to provide portable MRIs at certain correctional facilities, including Fishkill Correctional Facility (“Fishkill”), and that CDI separately contracts with MDS to schedule those MRIs and transmit radiologist reports. Thus, the technicians who administer portable MRIs at Fishkill are employed by U.S. Mobile, not MDS, and the trailers in which the portable MRIs are administered at Fishkill are operated by U.S. Mobile, not MDS.

The affidavits further suggest that on March 15, 2018,¹ Gary Garbutt, a technician employed by U.S. Mobile, attempted to conduct plaintiff’s initial MRI using a mobile MRI trailer operated by U.S. Mobile, but discontinued the procedure because plaintiff’s dental hardware prevented Garbutt from obtaining an interpretable scan. Accordingly, plaintiff’s MRI was rescheduled to May 10, 2018. On May 10, 2018, following removal of plaintiff’s dental hardware, a different U.S. Mobile technician, Kim Miller, administered and completed plaintiff’s MRI using a mobile MRI trailer operated by U.S. Mobile.

Based on this information, the Court is inclined to dismiss MDS as a defendant in this case and to allow plaintiff to file a second amended complaint, in which plaintiff may allege his deliberate indifference claim (Counts Seven and Eight of the amended complaint) against Gary Garbutt and/or U.S. Mobile, who appear to be the real defendants in interest. However, because plaintiff’s deliberate indifference claim respects only his first-scheduled MRI attempted on March 10, 2018 (or, as plaintiff alleges, on February 14, 2018), the Court sees no reason why plaintiff should be granted leave to plead his deliberate indifference claim as against Kim Miller,

¹ In his amended complaint, plaintiff alleges his initial MRI was conducted on February 14, 2018.

the U.S. Mobile technician that completed plaintiff's second-scheduled MRI on May 10, 2018, after plaintiff's dental hardware had been removed.

The telephonic case management conference scheduled for September 4, 2020, at 9:30 a.m., will proceed as scheduled. At that time, plaintiff and defense counsel shall be prepared to discuss the issues referenced above. In the meantime, plaintiff should think about the Court's inclinations and how he wishes to proceed given the information provided to him by defense counsel.

Chambers will mail a copy of this Order to plaintiff at his address on the docket.

Dated: August 5, 2020
White Plains, NY

SO ORDERED:

A handwritten signature in black ink, appearing to read "Vincent L. Briccetti", written over a horizontal line.

Vincent L. Briccetti
United States District Judge